

1 DAVID L. ANDERSON (CABN 149604)
United States Attorney

2 HALLIE HOFFMAN (CABN 210020)
3 Chief, Criminal Division

4 DAVID J. WARD (CABN 239504)
Assistant United States Attorney

5 450 Golden Gate Avenue, Box 36055
6 San Francisco, California 94102-3495
7 Telephone: (415) 436-6934
8 FAX: (415) 436-7234
david.ward@usdoj.gov

Attorneys for United States of America

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION
12

13 UNITED STATES OF AMERICA,)	CASE NO. CR 19-0116 RS
)	
14 Plaintiff,)	STIPULATION AND ORDER TO RESET
)	STATUS CONFERENCE/MOTIONS FILING
15 v.)	DATE AND TO EXCLUDE TIME
)	
16 JOHNNY EARL HENDERSON;)	
)	Judge: Hon. Richard Seeborg
17 Defendant.)	Hearing Date: April 14, 2020
)	
)	
)	

19
20 The parties file this stipulation asking to Court to vacate the status hearing/motion filing deadline
21 scheduled in this matter for April 14, 2020, and to set a status hearing and motions setting date on May
22 5, 2020, or as soon thereafter as practicable. The parties jointly file this stipulation in response to the
23 difficulties created by the spread of Coronavirus Disease 2019 (“COVID-19”) and the shelter-in-place
24 regulations in place in the Bay Area and throughout California. In particular, following this Court’s
25 order of March 16, 2020 granting the defendant’s discovery motions, COVID-19 has impacted the
26 ability of defense counsel to use the new discovery allowed by this Court to gather court records and
27 interview witnesses.

28 //

1 The parties further request that the time between April 14, 2020, and May 5, 2020, or as soon
2 thereafter as this matter can be heard, be excluded from any time limits applicable under the Speedy
3 Trial Act, 18 U.S.C. § 3161. An exclusion of time is appropriate because:

4 The Court may exclude time due to any “period of delay resulting from the absence or
5 unavailability of the defendant or an essential witness,” 18 U.S.C. § 3161(H)(3)(A). This provision is
6 designed to address, among other issues, a case where the defendant’s or witness’s “whereabouts are
7 known, but his presence for trial cannot be obtained by due diligence or he resists appearing at or being
8 returned for trial.” § 3161(3)(A)(B). Here, the shelter-in-place order may limit the ability of both
9 parties to track down and meet with witnesses or, in the case of defense counsel, meet with his/her client
10 despite knowing his/her whereabouts.

11 The Court may appropriately exclude time on ends-of-justice grounds. The country’s public
12 health interest in stemming the spread of COVID-19 outweighs the interest of the “public and the
13 defendant in a speedy trial.” § 3161(h)(7)(A); *see also Furlow v. United States*, 644 F.2d 764 (9th Cir.
14 1981) (finding no Speedy Trial Act violation where the district court granted an ends-of-justice
15 continuance following the eruption of Mt. St. Helens).

16 A failure to grant the requested continuance would unreasonably deny defense counsel the
17 reasonable time necessary for effective preparation, taking into account the exercise of due diligence
18 because his ability to meet with the client and review discovery may be constrained by shelter-in-place
19 and quarantines. § 3161(h)(7)(B)(iv). The Court may also exclude time for continuity of counsel for the
20 same reasons. *Id.*

21 DATED: March 24, 2020

Respectfully submitted,

22 DAVID L. ANDERSON
23 United States Attorney

24 _____/s/_____
25 DAVID J. WARD
26 Assistant United States Attorney

27 DATED: March 24, 2020

28 _____/s/ with Permission_____
MICHAEL J. SHEPARD
Counsel for Defendant Henderson


1 **ORDER**

2 For the reasons stated above, the Court VACATES the status conference/motions filing deadline
3 scheduled in this matter for April 14, 2020 and CONTINUES this case to May 5, 2020, or as soon
4 thereafter as practicable, for a status hearing and motions setting date.

5 The Court also finds that exclusion from the time limits applicable under 18 U.S.C. § 3161 the
6 period from April 14, 2020, through May 5, 2020, or as soon thereafter as practicable, is warranted and
7 that the ends of justice served by the continuance outweigh the best interests of the public and the
8 defendant in a speedy trial. 18 U.S.C. § 3161(h)(7)(A).

9
10 **IT IS SO ORDERED.**

11
12 DATED: 3/24/2020

13 
14 HON. RICHARD SEEBORG
15 United States District Court Judge
16
17
18
19
20
21
22
23
24
25
26
27
28